

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFFREY D. JOHNSTON,)	CASE NO. C05-0121-JCC-MAT
)	
Petitioner,)	
)	
v.)	ORDER DENYING PETITIONER'S
)	MOTION FOR SANCTION
RICHARD MORGAN,)	
)	
Respondent.)	
_____)	

Petitioner, proceeding *pro se* in this 28 U.S.C. § 2254 habeas corpus action, filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. (Dkt. 21.) Petitioner requests that respondent's answer be stricken from the record and sanctions imposed based on respondent's inaccurate assertion that petitioner did not appeal a superior court order denying his motion to withdraw his guilty plea.

Respondent opposes petitioner's motion. (Dkt. 22.) Respondent avers that the erroneous assertion was inadvertent and made in good faith. Respondent further notes that petitioner failed to provide him with an opportunity to correct his answer prior to filing this Rule 11 motion. Respondent has since filed an amended answer, correctly indicating that petitioner did appeal the order denying his motion to withdraw his guilty plea. (Dkt. 23.)

///
///

01 Having considered the materials submitted by the parties, the Court hereby finds and
02 ORDERS:

03 (1) Rule 11 requires certification that a pleading, motion, or other paper “is not being
04 presented for an improper purpose[;]” that “the claims, defenses, and other legal contentions
05 therein are warranted by existing law or by a nonfrivolous argument for the extension,
06 modification, or reversal of existing law or the establishment of new law;” that “the allegations and
07 other factual contentions have evidentiary support or . . . are likely to have evidentiary support
08 after a reasonable opportunity for further investigation or discovery;” and that “the denials of
09 factual contentions are warranted on the evidence or . . . are reasonably based on a lack of
10 information or belief.” Fed. R. Civ. P. 11(b). The rule further requires that a motion for sanctions
11 not be filed with the court unless, within twenty-one days after service, the opposing party fails
12 to withdraw or appropriately correct the challenged action. Fed. R. Civ. P. 11(c)(1)(A). In this
13 case, petitioner fails to show that respondent’s erroneous assertion as to his failure to appeal was
14 other than inadvertent or made in bad faith. Petitioner further failed to provide respondent with
15 an opportunity to correct the erroneous assertion prior to filing his Rule 11 motion. Accordingly,
16 petitioner’s motion for sanctions (Dkt. 21) is DENIED.

17 (2) The Clerk is directed to send a copy of this Order to petitioner, to respondent’s
18 counsel, and to the Hon. John C. Coughenour.

19 DATED this 25th day of July, 2005.

20 

21 Mary Alice Theiler
22 United States Magistrate Judge
23
24
25
26